THE ANCIENT HEBREW LAW OF HOMICIDE*

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II

We have now reached the point when it is our business to examine minutely the texts bearing on the subject of homicide. One of them, however, the Exodus text, has in it elements of complication. All the other texts are simpler. Deuteronomy and Numbers treat of murder and of manslaughter, Joshua of manslaughter only, Leviticus of murder only. Exodus, however, which, like Deuteronomy and Numbers, treats both of murder and manslaughter, deals also with other aspects than are elsewhere considered.

We are brought (21. 20–1) face to face with the ugly slavery question, and learn that though the slave is no longer a mere chattel, he has not yet the full rights of a man, and the general law does not cover his case.

We find two other exceptions to be touched upon hereafter.

Our purpose in this course is to deal with the general law of homicide only. There may be an opportunity at some future time, to consider such important subjects as slavery and its history, as indeed there are many other questions in Hebrew law and polity worthy of study. For the present investigation, the portion of the Exodus texts which immediately concerns us is composed of three verses only (Exod. 21. 12–14).

They begin with the broad proposition that a man who kills another shall be put to death (*makkeh ish wa-met*,

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mot yumat), which is followed by a limitation or qualification of its generality, and this again by an emphatic statement or definition of the original proposition as qualified. The effect is to divide homicide into two degrees: the first, for which the death penalty is inexorably imposed, we may, for convenience, call murder; and the second, for which the death penalty is not imposed, may be called manslaughter.

As to the quality of the offence, there is no trace of the idea that it is a trespass merely. JHVH directs Moses to announce these *mishpaṭim* to the community, the *Bne-Israel* (20. 22; 21. 1), and the enforcement of the law is to be by it: I will appoint for *thee* the *maḳom* for the manslayer; *thou* shalt take the murderer from mine altar for death. Private interests are not alluded to. Tribunals are provided. When a Hebrew slave's term of service is to become perpetual, the master brings him to *Elohim* (21. 6); when vindictive damages are to be ascertained, the *pelilim* fix the amount (21. 22); a slave maimed by his master goes free, a right impossible to be enjoyed by a slave without public protection; in the only allowable case of *kofer* the sum is ascertained by a tribunal (21. 30); a bailee who has been robbed must appear before *Elohim* for judgement (22. 8 (9)), and railing at *Elohim* when one's case has been lost, is expressly forbidden (22. 27 (28)). In short, we are dealing here with the prosecution by the commonwealth of a high crime. As befits so serious a matter, the definitions are painfully minute.

If a man comes presumptuously (*yazid*) upon his neighbour to slay him craftily (*be-ʿormah*), he is *makkeh-ish*, within the meaning of the twelfth verse, and must be put to death (21. 14). If he have not lain in wait (*lo ṣadah*),

but Elohim have delivered him into his hand (*ha-Elohim innah leyado*), he is not a *makkeh-ish* within the meaning of the twelfth verse.

The physical acts are the same in both cases, the evil effect is the same in both cases. This old Hebrew law, however, treats these facts as irrelevant in the determination of the perpetrator's degree of guilt and punishment. It looks in this regard solely to intent, to motive. Only the murderer forfeits his life, and this murderer is one who lies in wait, who comes presumptuously, with a set purpose. The words used are impressive. Lying in wait is called *ṣadah*, the term employed to describe the wily tactics of the hunter who pursues his game (Gen. 10. 9; 25. 27, 28; 27. 3, 5, 7, 33; Lev. 17. 13). There are other instances of the use of the same word to describe a man-hunt (1 Sam. 24. 11; Lam. 4. 18).

Coming presumptuously is called *yazid*, a word likewise used in other passages to express insolent defiance of law or right (Deut. 17. 12, 13; 18. 20, 22; Isa. 13. 11).

Coming with a set purpose is expressed by the word *be-'ormah*, meaning prudence, foresight (Prov. 1. 4; 8. 5, 12), or in a baser sense, craftiness (Joshua 9. 4).

The words describing the act of the man who is not guilty of murder, but of mere manslaughter, are equally striking. That he did not lie in wait (*lo ṣadah*) is naturally the first and most important element of his defence. The verse, however, goes further and says *ha-Elohim innah leyado* (*Elohim* has delivered him into his hand). The expression is one indicative of a state of general opinion which does not hesitate to acknowledge, in a very real sense, the government of God in human affairs. Under such circumstances it is not unnatural, it is even logical

to conclude, that when tragedy overtakes a man with stunning suddenness, unforeseen, unapprehended, it must be by the act of God. Whether the tragedy results from what we could call a pure accident, or from the sudden conflict of two impetuous and high-strung men, who never before had cause of quarrel, would make small difference in such a view—the man of that day saw God's hand equally in both cases.

This phrase, *ha-Elohim innah leyado*, would come to have a technical meaning among jurists, but would be so generally understood that a definition of it would not be thought of. Though we have no direct guidance to ascertain its precise meaning, we are not entirely without aid from other texts. There are at least two instances in which a form of this verb *anah* is used in a manner that throws light on our passage.

When Samson fell in love with a Philistine woman, he took the first step in a course of living which finally led to his destruction. His parents sought to dissuade him, but the Biblical writer makes the reflection that they knew not whereof they spoke, since it was JHVH's design to bring Samson into hostile collision (*to'anah*) with the Philistines who were then lording it over Israel (Judges 14. 4).

And that the idea of a quarrel is associated with the word is plain from the well-known story of the Syrian general Naaman. This distinguished man was afflicted with leprosy and could obtain no relief. A little Israelite handmaiden of his wife told her mistress that Elisha, the great prophet of Samaria, could cure him. The king hearing of this, insisted on Naaman's undertaking a journey to Samaria, at the same time giving him a personal letter

to the king of Israel, advising the latter that he had sent his favourite general to him to be cured.

The relations between the two powers were such that the king of Israel, when he read the letter, construed it to be a mere subterfuge. In his consternation he rent his clothes, and exclaimed: Am I *Elohim*, to kill or cure? He surely seeks to quarrel with me (*mit'anneh hu li*). Elisha, however, soon corrected the error by telling the king that Naaman's cure was not to be by the king, but by the prophet (2 Kings 5. 1–8).

In both these cases there is a subtle intimation that Divine wisdom at times foments a quarrel between persons not hostile to each other, in order to attain ends of justice which the narrow wisdom of human courts would be unable to reach.

To minds that hold these views, accidents are, of course, impossible. Everything is ordered by the *Elohim*, and man is responsible only for what he deliberately intends. Hence the term *ha-Elohim innah leyado* comprised a tolerably large range of happenings, from the death of a man by the mere slipping of his neighbour's axe from the helve, to the killing in hot blood.

The law of Exod. 21. 12–14 does not, however, stop with the mere definition of homicide. It points out what happened after a homicide had been committed. Whether it was murder or manslaughter, the perpetrator sought sanctuary; that is, he went to the altar and took hold of its horns.

The words are in the case of manslaughter: I will appoint thee a *maḳom*, whither he shall flee (or go) (21. 13); and in the case of murder: Thou shalt take him from mine altar (*mizbeaḥ*) for death (21. 14).

That *maḳom* and *mizbeaḥ* refer to the same place there can be little doubt.

Before the conquest the country was divided into many little kingdoms, called *'arim* (cities), each of which had a capital city, which was the seat of cantonal government. At its gate sat the tribunals; in the portion devoted to the priests were the paraphernalia of worship. In our lectures on Hebrew Polity we have pointed out the example of Ophrah in the early days of Hebrew domination when the *ziḳne ha-'ir* practised Canaanite rites and administered the law with, at least, a Canaanite infusion. The *maḳom* was the ecclesiastical section of the capital, and perhaps no better description of it can be given than that of Deut. 12, where the imperative command is given to destroy every one of them.

Ye shall utterly destroy all the *meḳomot*, wherein the nations which ye shall possess served their *Elohim*, upon the high mountains and upon the hills, and under every green tree. And ye shall overthrow their altars (*mizbeḥot*), and break their *maṣṣebot*, and burn their *asherim*, and hew down the *pesilim* of their *Elohim*, and destroy their names out of that *maḳom* (Deut. 12. 2, 3).

The elaborate furnishing of such a *maḳom* indicates that though there may have been humble shrines, popularly called *maḳom*, scattered through the country, yet the generally accepted *maḳom* was an important place in each canton, the capital city. Thus we read of *meḳom Schechem* (Gen. 12. 6), of Bethel, the *maḳom* where his (Abram's) tent had been (Gen. 13. 3); the *maḳom* of the *mizbeaḥ* (Gen. 13. 4), and again of Jacob's calling the name of the *maḳom* at Luz, Bethel (Gen. 28. 11–19).

Perhaps the best evidence is the fact that the Jerusalem

temple, in all its glory, is spoken of by Solomon as the *maḳom* (1 Kings 8. 29, 30, 35).

That in the days of the *ziḳne ha-'ir* the law of every canton was administered in its own capital city cannot be doubted. A person charged with homicide would be tried there. If, however, there was good reason to avoid trial, he could run to sanctuary, and it may be that he was not limited in that respect, but could be protected if he seized hold of the altar in the *maḳom* of any of the *'arim* in the land.

This sanctuary granted protection even to the convicted criminal.

That the Hebrew law of homicide, as laid down in Exodus, was based on ancient Hebrew common law is probable. At all events, it represented the thought that wilful murder generates blood-guilt, not alone in the perpetrator, but in the whole community. Translated into modern phrase, this means that murder is a high crime against the state, and that all elements of private trespass and consequent damages, which would otherwise inhere in it, are submerged and annulled.

We have heretofore enlarged upon the formation of the Hebrew state out of the pre-Hebraic cantons (*'arim*), and have shown that the town-councillors (*ziḳne ha-'ir*) insensibly fell into many of the ways of Canaanite religion and law. The formative period of the state began to show a decided progress towards national unity as early as the time of Samuel, but his administration and that of Saul were too disturbed to complete the establishment of a settled commonwealth. It was the genius of David which completed the work. His life, however, was largely taken up in securing his country against enemies from without

and from within. Much remained to be done. David was, above all, a warrior, and though he had magnificent plans for welding the state into a peaceful and harmonious whole, their fruition was not immediate. That he had conceived a mode of establishing the supremacy of federal law, and that it lacked efficiency, appears from an account in the second book of Samuel.

His son Absalom was ambitious to succeed to the throne. He was renowned for the beauty of his person (2 Sam. 14. 25); he made himself conspicuous by the mode of wearing his hair (2 Sam. 14. 26); he affected a state beyond the usual custom of royal princes (2 Sam. 15. 1). Above all, he was master of the arts of the demagogue. An incidental remark in the narrative telling of this quality, throws light on our subject. Absalom rose up early and stood beside the way of the gate; and it was so, that when any man that had a controversy (*rib*) came to the king for judgement (*la-mishpaṭ*) Absalom hailed him: From which *'ir* art thou? And the answer came: Thy servant is from such and such a place. Then Absalom would say: No doubt your case is good and just, but then the king has appointed no one to hear you. O that he would appoint me *Shofeṭ ba-areṣ*, so that any man that has a *rib* or *mishpaṭ* might come to me. I would right him. All these men made obeisance to him, and he received them with warm marks of affection. So acted Absalom with all Israel that came to the king for *mishpaṭ*, and, the historian adds, so stole Absalom the hearts of *anshe Israel*, the leading men of the nation.

The narrative proves that the administration of law in the several cantons had aroused discontent, and that a movement in favour of larger federal supervision was making

progress, or so supple a politician would not have become its chief advocate. And there are circumstances happening not much later which strongly confirm this view. David died about 970 B.C. One of the first acts of Solomon's reign was to institute a great fête at Gibeon. On that night he dreamed that he prayed JHVH to give him a *leb shomeaʿ*, a mind to hear and to judge (*lishpoṭ*) the people, to discern between the right and the wrong (1 Kings 3. 9), and that JHVH granted his prayer to the full 'so that there was none like thee before nor will be hereafter' (3. 12).

And by way of illustration, there follows the story of the two women and Solomon's wise judgement on their dispute, and all Israel believed that the wisdom of God was in him to administer justice (*la-ʿasot mishpaṭ*) (3. 28).

That he proceeded at once to reorganize the government, so as to bring the central power to bear on each corner of the state, appears from 1 Kings 4. And as a result we are told that Judah and Israel dwelt safely, every man under his vine and under his fig-tree, from Dan even to Beersheba (1 Kings 5. 5 (4. 25)).

In the pursuit of his great federal policy, he planned to make Jerusalem a point of attraction for every inhabitant of the country, and for strangers from abroad. Especially prominent was the group of great buildings of which the Temple was the most striking and impressive. One notable feature of his palace was the *ulam ha-mishpaṭ*, a porch for the throne where he sat as the chief judge of the kingdom (1 Kings 7. 7). Into the Temple was introduced the sacrosanct *Shem*, the Ark of the Covenant, the visible symbol of Divine Justice on earth (1 Kings 8. 21).

And Solomon, by his prayer, indicated that thereafter

its high function of administering justice by oracle would cease, and that ordinary courts would take its place, the judges whereof would impose an oath (*alah*) upon a man charged with injuring his neighbour, invoking God so to order that the guilty might be convicted (*le-harshiʿ rashaʿ*) and receive his deserts, and the innocent be acquitted (*le-haṣdiḳ ṣaddiḳ*) as is meet (1 Kings 8. 32).

These facts show the circumstances which led to Solomon's being heralded in legend as the great juridical genius of Israel. There is in his very name a hint that he was determined to put an end, once for all, not only to external wars, but to domestic disorders and feuds. Though the boy was named Jedidiah, probably to conciliate the turbulent Benjamite element in the state, by the adoption of the cognomen of their eponymous ancestor (Deut. 33. 12), yet his father, seasoned old warrior that he was, had come to see that peace was the highest ideal of a prosperous state. And so, as his end drew near, he charged the prince to build the Temple, which privilege, though eagerly sought, had been denied him, because he had delighted in bloodshed and grown great on it, and it had been reserved for a man who would give the country repose (*ish menuḥah*), in whose reign Israel should have peace (*shalom*) and quiet (*sheḳeṭ*) (1 Chron. 22. 6–9).

Solomon (*Shelomo*) was an appropriate cognomen for such a man, and it was David who bestowed it on him (2 Sam. 12. 24; 1 Chron. 22. 9).

It is probable that the first effort of the federal government was to correct the cantonal government's indifference to the offence of *sarah*, which was the active and open advocacy of Baal as against JHVH. In *Ancient Hebrew Polity* (pp. 51–61) I have shown the transfer of jurisdiction

over this offence from the *zikne ha-'ir* to the Federal High Court, there called the *'Am ha-ares*. This was a measure to protect the state against direct assault on the established religion which was its foundation.

Security of life everywhere within the kingdom was a matter of no less importance. To appreciate the gravity of the question thus presented, we must try to understand the pre-Hebraic Canaanite law of homicide.

The common notion that it was in the pure blood-feud or vendetta stage is unsupported by adequate evidence. In placing before you the sources of our information in the first lecture, you will remember that eleven provisions of the law of Ḥammurabi (*circa* 2250 B. C.) were presented, being the only articles of that Code in any wise bearing on the subject of homicide. They show that at the time of the promulgation of that Code, the Babylonian state had not yet assumed jurisdiction over homicide. The inference is that the law of blood-feud or vendetta, in some form, was then in force. Blood-feud or vendetta is a form of true law. Before a state is fully organized, certain functions which ought to be exercised by it are left to the control of subordinate organizations within it, such as families, clans, or guilds. Homicide is one of the subjects with which early governments are not eager to deal.

During such preparatory stages of a state's growth, the vendetta is the only safeguard of human life. It protects society. Far from being an enemy of the nascent state, it is an effective aid to its development. So soon, however, as the proper stage has been reached, the vendetta law is at first modified, and afterwards, when the state has assumed the whole jurisdiction over cases of homicide, it is totally repealed and destroyed. Sporadic survivals here and there

are in the nature of conscious crime, and in no wise impair the force of these general rules.

The result as here sketched is inevitable. State laws against homicide raise questions of fact and law which cannot be determined otherwise than by regularly constituted tribunals.

Vendetta law, on the other hand, is plain and simple, and needs to make no curious inquiry into circumstances or motives. A member of clan A has killed a member of clan B. The latter must retaliate in kind; for, if there were no such redress, the injured clan would become the mark for hostile assault from all quarters.

That state laws which punish a man for his own crime only, cannot co-exist with a system which punishes without regard to the question whether the victim is innocent or guilty, is too obvious for argument.

The reticence of the Ḥammurabi Code on the subject of homicide does not forbid the conclusion that the vendetta law, pure and simple, was no longer dominant; that though tolerated to a degree, it had undergone modification.

It needs but little reflection to understand that the vendetta law is, in effect, a perpetual civil war between constituent elements of a state, and that its unbridled practice can have no other result than the destruction of the state.

The Ḥammurabi Code presents indications that it realized this truth, and though it did not deal with homicide directly, it ordered the several corporate elements of the state to accept *wergild* or money satisfaction for certain kinds of homicide.

One who killed another in a quarrel paid to the bereaved family or clan or guild a certain value in silver, and there the matter ended.

That in course of time this principle of *wergild* also extended to cases of wilful murder is probable. It is not to be believed that great states like Babylonia and Assyria failed to change their laws from time to time. Reverence paid to ancient codes does not mean that they retain their pristine usefulness, or that no part of them has become obsolete.

We may well believe that when the Hebrews entered Canaan, a thousand years after the promulgation of the Ḥammurabi Code, the latter had been essentially changed, and that the vendetta law for murder had been materially modified. Be that as it may, there is no evidence that unmodified vendetta law then ruled in Canaan. Everywhere there were ordered little kingdoms whose existence would have been daily imperilled from within had such licence been tolerated.

The evidence of the Hebrew legislation on the subject confirms the view that the Canaanite law of homicide was vendetta law as modified by *wergild* (*kofer*). While the kings of the various *ʿarim* did not make homicide an affair of the state, they nevertheless preserved the peace of the *ʿir* by permitting the tribunals to assess the proper amount of *kofer*.

This was the state of the law when the Hebrews entered Canaan, and the whole evidence tends to show that the *ziḳne ha-ʿir* of the various cantons failed to administer the Hebrew law whose letter and spirit were hostile to the native practice of *kofer*.

There are hints in the Biblical writings which seem to attest the existence of the practice of *kofer*, and to indicate that the *maḳom* priests were the intermediaries who arranged terms between the parties.

It will be remembered that Eli's sons and Samuel's sons were, in the popular mind, guilty of abusing their high positions for their own material advantage. After the coronation of Saul, Samuel, smarting under the national repudiation implied by the establishment of the monarchy, delivered a farewell address, in which, with conscious integrity, he challenged any man to point to any questionable transaction in his long public career. One of the acts he repudiates is the taking of *kofer* that blinds the eyes (1 Sam. 12. 1–5).

The Authorized Version renders it *bribe*, evidently under prepossession of the idea that Samuel was a *shofeṭ* in the later sense, a judge of a law-court, and without reflecting that Samuel was the *Kohen's* acolyte; that as a child he ministered before JHVH, girded with a linen *ephod* (1 Sam. 2. 18; 3. 1); that he was to be a *Kohen ne'eman* to replace Eli's sons (2. 35), and that all Israel recognized him as *ne'eman*, as a *nabi* of JHVH (3. 20).

That the sons of Eli, among other things, were charged with profiting by *kofer*, may be fairly assumed, and hence Samuel's defence probably alludes to the well-established custom of the *maḳom* priest to assist in the negotiation between the *roṣeaḥ* and the family *go'el*.

Moreover, the word *kofer* occurs thirteen times, and the Authorized Version renders it *ransom* in eleven of them. The only other exception is in Amos 5. 12 where it also renders *bribe*.

The proper word for *bribe* is *shoḥad*, which means gift, since the ancient Hebrews believed that a gift to a public official by a person who had or was likely to have an interest in a matter before him, was a bribe. It occurs twenty-one times, and in every instance the odious feature

appears that it is designed to curry favour with a person in power. The guilty (*rasha'*), says Prov. 17. 23, proffers *shoḥad* to avert justice, and Micah (3. 11) describes judicial depravity with the bitter words: They judge for *shoḥad.*

While *shoḥad* means giving something for a consideration which no man will avow, *kofer* conveys the idea of a valuable consideration. The money is due as ransom, solace or atonement for an injury committed. It is the *wergild* or damages paid by one who has killed another to the head of the decedent's family or clan, and received by the latter in satisfaction and discharge of all claims and animosities.

However inveterate a custom like *kofer* may have been, the idea that the priests would abuse their functions in relation to it, would be sure to grow and to engender bitterness. Popular hatred would not nicely discriminate between *shoḥad* and the profits of *kofer*, and in fact we find that Samuel's sons were charged outright with taking *shoḥad* (1 Sam. 8. 3).

The one other instance in which *kofer* is rendered *bribe* throws some light on the inveteracy of custom. That the Northern Kingdom was slower than the Southern in purifying the Hebrew law of Canaanite admixture, is highly probable. Amos (about 750 B.C.) visited the Northern Kingdom, apparently for the purpose of effecting some reforms in that respect. That his utterances attracted attention appears from the fact that he was directed to leave the country, the priest of Bethel reporting to the king of Israel that the land was not able to bear all his words (Amos 7. 10, 12). Though not satisfied with conditions in his own Judah, Amos seems to have been horrified by what he saw in Israel. He comments par-

ticularly on evasions of the *Torah*, and gives particulars. They sell persons into slavery who are not liable to this punishment (*ṣaddiḳ*) (2. 6); they violate certain purity statutes (2. 7); they ignore the law (Deut. 24. 12, 13), requiring that a pledged garment be put in the pledger's possession at night (2. 8); they break the law (Num. 6. 3), forbidding strong drink to Nazarites (2. 12); they mock those who pronounce judgements according to the *Torah* (5. 10); they convict the innocent (*ṣaddiḳ*), they take *kofer* (5. 12). He implores them to establish *mishpaṭ* (the law) in the *sha'ar* (courts) (5. 15).

In this powerful invective he charges that taking *kofer*, though forbidden by the *Torah*, is still practised, and puts the conviction of the innocent as an antithesis to taking *kofer*, which is, in effect, letting off with a fine some who should answer with their lives.

Vendetta law, modified by *kofer*, is perhaps the least desirable of all, when a state is increasing in wealth and power. Violence by turbulent chieftains is doubtless a serious evil in the state, but bloodshed that may be paid for in money by peaceful, wealthy citizens is much more shocking.

The time had come when *kofer* for murder had become inconsistent with the safety of the state, and Solomon determined to abolish it, and to enforce the Exodus statute.

There is nothing in the records to show that the *ziḳne ha-'ir* were deprived of their function. That federal legates were sent to sit with them, would appear to be certain from the *ziḳne ha-'ir* law of Deut. 21. 1–9, which prescribes that in murder cases where the perpetrator could not be discovered the *Kohanim* (*bne-Levi*) were to be present, and that their duty was to pronounce the law in

every case, civil and criminal (*kol rib we kol nega'*) (21. 5). The broad statement of their powers seems intended to negative any inference that their duty was limited to the particular kind of case under discussion.

There is, moreover, no hint that the execution of any judgement they might pronounce was to be in any new mode. Under the vendetta-*kofer* law, the judgement doubtless was that the perpetrator of the homicide was to pay to the *go'el* of the bereaved family a certain amount specified by the *zikne ha-'ir*, failing which payment the *go'el* was entitled to put him to death. Motive and circumstances were not inquired into. A killing by accident was not differentiated from deliberate assassination. The great change to be effected by the new federal movement was that murder was to be carefully distinguished from manslaughter, and that neither *kofer* nor any other defence or device could save a murderer from death. A fatal blow was dealt the old pagan custom of sanctuary. It was no longer to protect the murderer. Thou shalt take him from mine altar for death (Exod. 21. 14).

Concerning manslaughter the matter is not so clear. As the manslayer was still entitled to the privilege of sanctuary, and as nothing is said about subsequent proceedings, the inference is that *kofer* for manslaughter was tolerated. This conclusion is strengthened by the law respecting the goring ox. If the master knew of his vicious habit, and allowed him to go at large, and he killed a person, this was held to be constructive murder by the master, and the punishment denounced was death: 'the ox shall be stoned, and his owner also shall be put to death' (21. 29). In this case, however, *kofer* is expressly allowed (21. 30). As constructive murder is an offence of a higher

grade than manslaughter, the probability that *kofer* was allowable in the latter is heightened.

It may be well worth while to pause here for a moment for the purpose of comparing the Hebrew law's view of homicide with that of our modern law.

The Hebrews noted cases of voluntary and of involuntary manslaughter just as we do. They did not, however, hit upon any line of division between the two. Our common law declares voluntary manslaughter to be the unlawful killing of another, without malice, on sudden quarrel, or in heat of passion. Involuntary manslaughter is, where a man doing an unlawful act, not amounting to felony, by accident kills another.

We also have excusable homicide, where a man doing a lawful act, without any intention to hurt, by accident kills another; as, for instance, where a man is hunting in a park, and unintentionally kills a person concealed. This we call homicide by misadventure.

The Hebrew law put under one and the same head of manslaughter, the voluntary, the involuntary, and the excusable homicide of our common law. They recognized an element of supernatural influence in them all equally, and punished them alike.

To this general classification there were but two exceptions: the constructive homicide by the goring ox, which we have just described, and the act of men, who in a quarrel with each other, accidentally hurt a gravid woman. The provision is obscure and leads to the suspicion of an injury to the text. It nowhere speaks of the perpetrator as killing the woman, or of the victim as dying. It names two kinds of result to the woman, one where there is no *ason*, and the other where there is *ason*. The term *ason* is defined as

meaning mischief, evil, harm (Brown-Driver, p. 62). That miscarriage should be described as no mischief (*welo . . . ason*), and that death should be described as mischief (*ason*), is certainly peculiar. The one appears to understate the fact, the other to overstrain the word. We have before us a case which was evidently part of the Canaanite common law. The Code of Ḥammurabi, as we have seen, has provisions on the subject (Sections 209–14). It distinguishes the victims into three classes: gentleman's daughter, poor man's daughter, and gentleman's female slave. It divides the effect of the injury into two classes: miscarriage and death. For miscarriage the damages are ten shekels, five shekels, and two shekels, according to the social rank of the woman; for death, the penalty, if the victim be a gentleman's daughter, is the death of the perpetrator's daughter; if she be of the other ranks, a half-mina of silver, and a third of a mina of silver, respectively.

The Babylonian law treated the miscarriage itself as a punishable mischief, while the Hebrew law in its present form, declares it to be no mischief, but nevertheless imposes punitive damages (*ʿanosh yeʿanesh*). The probability would seem to be that in the case of accidental death like this, the general rule prevailed that the death penalty could not be imposed for homicide, unless it was committed with malice aforethought. The term *ʿanosh yeʿanesh* would then cover the whole case, *ason* or no *ason*. The *pelilim* would make a just appraisement of the damage suffered by the woman, if she lived, or by her husband in consequence of her death. This would, in effect, take the case out of the list of criminal acts and reduce it to a civil trespass, for which damages were recoverable—a conclusion with which our modern law might readily concur (Exod. 21. 22–5).

That the first effort of the federal government to revolutionize the ancient practice was not very successful, is easily inferable from the fact that important amendments to the law were soon made. These are incorporated in the Deuteronomy statute, and the nature of the changes leads to the suspicion that the taking of *kofer* for murder was still practised. The family *go'el*, who, by immemorial custom, was entrusted with the death-warrant, did not take the murderer from the altar, and it is to be feared that the *zikne ha-'ir* and the *makom* priest connived at this breach of the federal law. The habit of collecting money damages was deemed too valuable a privilege to abandon for the sake of abstract justice or large state policy.

The new remedies introduced by the Deuteronomy statute were:

1st. The positive assumption by the state of exclusive jurisdiction over all homicide cases, or, in the words of the text, the acknowledgement of national blood-guilt (*dam*) for homicide.

2nd. The abolishment of the ancient right of the family *go'el* to receive the warrant of execution from the *zikne ha-'ir*, and the compulsory duty of the latter to entrust it to a newly created federal officer for each canton—the *go'el ha-dam*—who is not the family *go'el*.

3rd. The abolishment of sanctuary for homicide and the exclusion of the *makom* priests from any concern therein.

4th. The establishment of three judicial districts, and the setting apart of one city in each to which every perpetrator of a homicide must go.

5th. The total abolishment of *kofer* for manslaughter, and the substitution therefor of internment in the separated city, as punishment for the crime.

6th. A marked change in the law of evidence, by which the testimony of one witness only became incompetent to convict.

As regards the first and second of these points, it is to be remarked that the name *go'el ha-dam* was the mere adaptation of a word in common use: *go'el.* The *go'el* was that member of the family who, when it lost its head, was the next friend; a kind of sublimated executor and guardian, who looked after the interests of his kinsmen in trouble. And now it was the state whose new measures and principles avowed that it had incurred blood-guilt (*dam, damim*); that an evil fate threatened the country, unless this blood-guilt was redeemed or removed.

A *go'el* or redeemer was needed, and thus the *go'el ha-dam,* a being never heard of before, was created. He was the state's redeemer from blood-guilt, not the avenger of the victim's blood. Had he been the latter, he would have been *noḳem ha-dam.*

The confusion that exists has arisen out of the double meaning of *dam,* blood and blood-guilt, accompanied by an exaggerated notion of ancient views concerning the sanctity of blood. The Hebrews forbade the drinking of blood, because nations with whom they came in contact practised this habit, in association with other habits and rites which the Hebrews deemed demoralizing. *Dam* means blood. It also means blood-guilt, and even in this sense it means two kinds of blood-guilt—the primary blood-guilt of the perpetrator, and the secondary blood-guilt of the community which the latter incurs by its failure to prevent the killing, an error which it must expiate, either by punishing the slayer, or, if he remains undiscoverable, then by formal legal ceremony. It is with this secondary

blood-guilt, the communal blood-guilt, that our investigations are more immediately concerned. Its name is sometimes *dam*, sometimes *damim*.

We have, in our first lecture, referred to the striking passage of Genesis (9. 5), which refers the origin of this keen sense of communal responsibility to the direct instruction of Noah by *Elohim*, at the very beginning of the new world after the Deluge.

The same view is expressed, or implied, in other passages:

Ye shall not pollute the land wherein ye are; for blood-guilt (*ha-dam*) defileth the land, and the land cannot be cleansed (*yekuppar*) from the guilt of blood (*la-dam*) shed therein, save by the blood of him that shed it. Defile not therefore the land which ye shall inhabit, wherein I dwell (Num. 35. 33, 34).

That *dam naḳi* be not shed in thy land, which JHVH, thy *Elohim*, giveth thee for an inheritance, and so blood-guilt (*damim*) be upon thee (Deut. 19. 10).

Jeremiah expresses the same idea:

If ye kill me, ye bring the guilt for innocent blood (*dam-naḳi*) on yourselves, on this city, and on its inhabitants (Jer. 26. 15).

And Joel does the same:

I will cleanse their blood-guilt (*we-niḳḳeti damam*) that I have not cleansed; for JHVH dwelleth in Zion (Joel 4 (3). 21).

We have, moreover, the impressive ceremony of communal purgation from this kind of blood-guilt in Deut. 21. 1–9.

By the force and operation of the new federal policy the realization of communal responsibility for murder

became much keener in the Hebrew state than it is in our modern conditions. They also felt a more urgent responsibility for their own share in any transaction which might result in loss of life, as is seen in this provision:

When thou buildest a new house, then thou shalt make a battlement for thy roof, that thou bring not blood-guilt (*damim*) upon thine house if any man fall from thence (Deut. 22. 8).

This extreme sensitiveness concerning blood-guilt was not due to the fear of savage reprisal, as has been commonly thought. The instance just given is clearly an ancient urban regulation, expressing developed feelings and not primitive passions.

So insistent did this notion of blood-guilt become that it cropped out everywhere. If the law proclaimed capital punishment for an offence, it conceived blood-guilt as somehow inseparable even from a legal execution, and got rid of it by ascribing the blood-guilt to the convicted defendant himself, whose bad conduct compelled the state to slay him. The terms are: *damaw bo*, the blood-guilt for him is upon himself (Lev. 20. 9); *demehem bam*, the blood-guilt for them is upon themselves (Lev. 20. 11, 12, 13, 16, 27; 1 Kings 2. 33).

A community so impressed with the awfulness of blood-guilt will do all in its power to avoid it. There is need for untiring vigilance to ward it off. The functionary whose office it is to see to the community's expiation, may well be called the community's next friend. And for this position there is no Hebrew word more apt than *go'el ha-dam*, the next friend of the community in warding off its blood-guilt.

According to this view the word *go'el* expresses a direct relation with the community, and the word *ha-dam* a con-

dition of the community which is to be protected by that relation. The common notion is that the direct relation of the *go'el ha-dam* is with the criminal. *Go'el* is held to be the *avenger* who smites the criminal, and *ha-dam* is not the blood-guilt of the community, but the blood of the victim. The *go'el ha-dam* would thus be the avenger of the victim's blood. The contrast is sharp. On the one hand the community's friend and saviour; on the other, the criminal's vengeful enemy.

In support of the former view, it may be said that no instance can be found where *go'el* does not mean one who has a friendly function to perform, a function which has a sustaining effect on the person for whom he acts, whose *go'el* he is.

When one exhibits his friendliness by injuring his client's adversary, he is no longer *go'el*, but *noḳem*, avenger.

Isa. 63. 4 brings this out clearly. JHVH is represented as going forth to take vengeance on Edom for wrongs it has perpetrated against His people Israel, and as declaring:

The day of vengeance (*yom naḳam*) (against Edom) is in my heart.

The year of my redeemed (*shenat ge'ulai*) (Israel) is come. And in ver. 8 this relation between JHVH and Israel is expressed by the parallel term *moshia'* (saviour), while in ver. 9 both terms are used together—*hoshi'am* and *ge'alam*.

That *go'el* is uniformly used as here contended, let numerous instances attest:

Jacob invokes for Joseph's sons the blessing of his protecting angel (*ha-mal'ak ha-go'el*) (Gen. 48. 16).

JHVH promises to redeem Israel (*we-ga'alti*) (Exod.

6. 6), and in the song of Moses is worshipped for having done it (*ga'alta*) (Exod. 15. 13).

In Lev. 25, the redemption of the former owner of land, sold by him, is spoken of, and it has the technical name of *ge'ullah* (25. 24), and his act in so redeeming is called *yig'al* (25. 33).

If he be too poor to redeem, his next of kin shall do so for him (*ga'al*), and this friendly redeemer is the *go'alo ha-ḳarob elaw* (25. 25).

Among the list of those who shall act as *go'el* are the uncle, the uncle's son, or indeed any near kinsman (*she'er besaro*) (25. 49).

When Zimri exterminated the whole house of king Baasha of Israel, he left none of his *go'alim* or *re'im* alive (1 Kings 16. 11).

Jeremiah uses the word in the same sense of redemption—*ge'ullah* (Jer. 32. 7, 8).

He (Boaz) is one of our near relatives, of our *go'alim* (Ruth 2. 20; 3. 9, 12, 13; 4. 1–10; 4. 14).

Thus it is seen that the word *go'el* presents only the idea of service rendered to the friend by an act making directly, and not indirectly, for his benefit. It is true that such a *go'el* might render a kind of doubtful indirect service to his friend by hurting the latter's enemy. When such is the case, the word *ga'al* does not present itself to the Hebrew mind as describing the act. As we have seen from Isa. 63. 4, it is *naḳam* which describes the vengeful aspect of an act, because, however friendly it may be to the beneficiary, it is hurtful to the victim. Indeed, it is the only true Hebrew word for vengeance, though there may have been a dialectal variation of it (*naḥam*) which Isaiah uses in alliterative parallelism.

JHVH, the *abir* of Israel, says:

Oh, I will ease me (*ennaḳem*) of mine adversaries, and avenge me (*innaḳemah*) of mine enemies (Isa. 1. 24).

And he uses the word *naḳam* in the same sense frequently (34. 8; 35. 4; 47. 3; 59. 17; 61. 2).

Whoever slayeth Cain, vengeance shall be taken on him (*yuḳḳam*) (he shall be punished) sevenfold (Gen. 4. 15; 4. 24).

Thou shalt not avenge (*tiḳḳom*) nor bear grudge (*tiṭṭor*) (Lev. 19. 18).

Avenge (*neḳom niḳmat*) the Bne-Israel of the Midianites (Num. 31. 2, 3).

Mine is punishment (*naḳam*) and recompense (*shillem*) (Deut. 32. 35).

If I whet my glittering sword and mine hand take hold on judgement, I will punish (*naḳam*) mine enemies, and will recompense (*ashallem*) them that hate me (Deut. 32, 41).

And the sun stood still

And the moon stayed

Until the people had avenged them (*ʿad yiḳḳom goy*) of their enemies (Joshua 10. 13).

Samson shouted at the Philistines: *Niḳḳamti bakem* (I will be avenged on you) (Judges 15. 7; 16. 28).

It is God who vouchsafed me vengeance (*neḳamot*),

And subjected peoples to me (2 Sam. 22. 48).

Jeremiah uses the word frequently (11. 20; 20. 10, 12; 46. 10; 50. 28; 51. 6, 36), as does Ezekiel (24. 8; 25. 12, 14, 15, 17). Nahum does the like (1. 2), as does Proverbs (6. 34).

Perhaps the most impressive use of the word *naḳam* in this connexion is found in passages in which it is employed to denote vengeance against murderers.

He will avenge (*yiḳḳom*) the blood (*dam*) of his servants

And inflict vengeance (*naḳam*) on his adversaries (Deut. 32. 43).

I will avenge the blood (*we-niḳḳamti damim*) of my servants, the prophets, and the blood (*damim*) of all the servants of JHVH at the hand of Jezebel (2 Kings 9. 7).

In law, too, the word *naḳam* is used technically to denote punishment of a severe kind (Exod. 21. 20, 21).

The examples given fairly justify the conclusion that the *go'el ha-dam* was the public executioner, who, by fulfilling the death-sentence against murderers, relieved the community of its secondary blood-guilt.

That the term should in time become disagreeable, and even odious, is inevitable. In our own language there is a sense of shudder in the word executioner, which was even more lively in its predecessor 'headsman'.

We have now reached a point at which we may pause. The old Hebrew law of Exodus has been analysed, the opposition to its enforcement explained. The stern justice of the state, under the guidance of the great king, has entered into a death-struggle with the crude *kofer*-justice of bygone ages. *Maḳom* priests and *ziḳne ha-'ir* are, some openly, some covertly, satisfied with the old and alarmed at the new. The vigorous blow at sanctuary, constricting its jurisdiction and limiting its power, is received with ill-concealed hostility. The substitution for the substantial advantage of *kofer* of an idea, an ideal—justice—a thing barren of personal profit, seems like the destruction of a valuable kind of property, the extinction of a vested right.

In our next lecture we shall proceed with the further examination of the Deuteronomy texts, whose general effect we have stated.

III

The Deuteronomy texts on the subject of homicide are three in number, and are contained in chapters 4, 19, and 27. Two of them, those in chapters 4 and 27, we may at once set aside as having no important bearing on our investigation.

The first (4. 41–3) is a mere historical note, stating that Moses severed three cities east of Jordan, whither the *roṣeaḥ bi-bli-daʿat* might flee (*la-nus*), he not entertaining hatred against him (*lo sone-lo*) before.

There is here no attempt to define murder. There is, however, an interesting novelty. Manslaughter is characterized by a term which is not used in Exodus. There the expression is that God had delivered the unfortunate victim into the slayer's hand (*ha-elohim innah leyado*). Here it is *bi-bli-daʿat*, that he had acted without intent, that he had acted on the spur of the moment. In the latter sense of stunning suddenness, the expression occurs in Job 36. 12. Isaiah (5. 13), too, uses the related expression, *mibbeli-daʿat*, in the same sense. In short, the idea that death resulting from a sudden quarrel in hot blood is not murder, which prevails in the Exodus text, is not departed from by the use of the new expression.

The third Deuteronomy text on the subject of murder is one line of the old *Arur*-code (27. 15–25): *Arur*, he who slays his neighbour by stealth (*makkeh reʿehu ba-seter*) (27. 24).

Here the term *ba-seter* conveys the idea of being under cover (lying in wait), just as do the words *ṣadah* and

beʿ-ormah in the Exodus text. (Examples of its use in an analogous sense are 1 Sam. 19. 2; 25. 20; 2 Sam. 12. 12.)

The important Deuteronomy text is the second, the long one in the nineteenth chapter. It opens with the command to divide the country west of Jordan into three districts, to set apart one city in each of said districts, and to construct a road to it in order that every slayer (*roṣeaḥ*) may flee thither (*yanus*). It then describes the slayer who is not subject to the death-penalty, using the expressions employed in the first Deuteronomy text, *bi-bli-daʿat* and *lo sone mittemol shilshom* (without intent or previous hatred). One single case is there presented, apparently as an illustration of what is meant by *bi-bli-daʿat*. A man goes into the forest with his neighbour to hew wood, and in felling a tree the head of the axe slips from the helve, hits his neighbour and kills him.

That this is *bi-bli-daʿat* is obvious, but it is so far short of illustrating the whole meaning of that term, that one is inclined to believe that the case put really belongs to a series similar to those presented in Numbers, and that it was either misplaced, or alternatively, that it was deemed unnecessary to repeat the cases already given in Numbers, and they were therefore omitted as superfluous repetition.

Some such conclusion is inevitable, when we consider the definition of murder, which immediately follows. It is there described as the act of killing a *sone* (a hated person), by lying in wait for him (*we-arab lo*).

The word *arab* in this connexion is new, not being used in the Exodus text. There the idea of lying in wait is expressed by the words *ṣadah* and *be-ʿormah*. It is, however, a word in general use, and conveys exactly the same idea as the expressions employed in the Exodus text.

This definition of murder excludes from that category all the cases of manslaughter derivable from the Exodus text, and from the term *bi-bli-da'at* of this text. It may therefore be regarded as certain that the single illustration of manslaughter (that in the fifth verse) is not intended to be exhaustive. Several other forms of manslaughter, such as those we have already inferred from the Exodus text, and such others as are given at length in the Numbers text, are within the meaning and under the protection of this statute.

Passing by the definition of the offence, we come to the main purpose of the statute.

The experiment of limiting and restraining the power of the sanctuary had not proved successful. Sanctuary was therefore definitely abolished. The *maḳom* and the *mizbeaḥ* were no longer of any avail. The *maḳom* priest's function, so far as homicide was concerned, was at an end.

The land west of Jordan was divided into three districts, in each of which a particular city was to be designated, and to each of these cities there were to be highways. The *roṣeaḥ* might flee (*yanus*) to the designated city of his district—that was the purpose of the institution.

For the first time we hear of the *go'el ha-dam*, the federal officer detailed to every canton as sheriff or executioner, to see that the punishment imposed by federal law should be visited upon the culprit, and to guard against the latter's escape by means of *kofer* or otherwise.

If the *roṣeaḥ* has killed any one, *bi-bli-da'at*, is guilty of manslaughter, he must bear the punishment. No *kofer* will be allowed. He *must* go to the designated city (a state-prison city), there to expiate by internment his offence of manslaughter. If he do not, no agreement for *kofer*

with the dead man's family, or with their *go'el*, with or without the connivance of the *zikne ha-'ir*, will protect him. He must die; the *go'el ha-dam* must put him to death. A reasonable fixed time, the length of which does not appear from the records, was, however, allowed, to enable him to reach the designated city. If he dawdled by the way and exceeded the time, he was amenable to the power of the *go'el ha-dam*, and paid for his carelessness with his life.

This rigid law was the reason for the strict injunction that the road should be in proper order, lest the culprit be delayed by reason of its imperfection, and thus perish by the public's neglect to keep the highway in proper repair, without any delinquency on his part.

There is in this text a clear indication of the procedure. The man who had killed another was tried by the *zikne ha-'ir*. The latter ought to have administered the Hebrew law, that is, they should have carefully examined, in order to determine whether the offence was murder or manslaughter. They were, however, as a rule, disinclined to enforce the Hebrew law, because a conviction of murder, punishable by death, would take away the family's opportunity for money damages. Their inclination would be to find the offence manslaughter, especially because the Canaanite law knew nothing of degrees of guilt in homicide. Whichever the finding, murder or manslaughter, the convict would have to go to the separated city, if he would escape death, since in either case the *go'el ha-dam* had a warrant for his execution after the lapse of the given number of days allowed the culprit to reach the designated city. This warrant ran everywhere, except within the designated city.

If the conviction was of murder, the culprit's object

was to take an appeal; if of manslaughter, to undergo the penalty of internment. The Deuteronomy text gives us no clue as to the nature or whereabouts of this appellate tribunal. One might conjecture that the three districts were somehow connected with Solomon's division of the country, as related in 1 Kings 4, and that each of the designated cities had a royal governor to whom certain powers in this connexion were confided. However that may be, there must have been some superior federal authority in the designated city. The *ziḳne ha-'ir* who had condemned the man for murder, applied to this authority to surrender the appellant. There were, naturally, cases in which the slayer, without waiting for the discovery of his crime, or for his trial, would promptly make the best of his way to the separated city, where he could tell the story of the happening, in his own way, to the *ziḳne ha-'ir*, who, not being of the immediate vicinage, would have no further information on the subject, and would provisionally receive him into the city, where he was safe from the warrant of the *go'el ha-dam*. In such cases the *ziḳne ha-'ir* of his own city would try him in his absence, and, in many cases, the result would be conviction. Whether convicted in his absence or in his presence, the *ziḳne ha-'ir* of his own city, who had condemned him, would have the right to ask for his extradition.

That the case was promptly heard and disposed of, there can be no doubt. If the appellate authority (whatever it was) affirmed the judgement of the *ziḳne 'iro*, they surrendered the culprit to the latter, and thereupon they, the *ziḳne 'iro*, delivered the prisoner to the *go'el ha-dam* for execution. It must follow, as a matter of course, that if the appellate authority was of opinion that the defendant was

not guilty of murder, but of manslaughter only, they retained him in the designated city, for the expiation of the minor crime. No mention is made of the term of detention, and it may have been for life. The circumstances show that all opportunity for *kofer* was intended to be taken away. The *go'el ha-dam* did not represent the family, there was no *maḳom* priest to act as mediator, and even if a settlement had somehow been effected, it would not have helped the culprit. As soon as he left the separated city, the inflexible *go'el ha-dam* was compelled by his warrant to put him to death (Deut. 19. 12).

An interesting feature of this nineteenth chapter is the announcement of what was evidently a novel principle in the law of evidence. It must always be remembered that in the Oracle trials witnesses as such had no function. The denunciant or denunciants, under solemn adjuration, made their statements, and on them the Oracle decided, there being no issue joined between parties.

Doubtless, on the discontinuance of the federal oracle tribunal, the denunciant took on the character of witness (*'ed*). The whole literature shows that denunciants were objects of hatred and fear to the general community, and a sentiment against convicting a man on their unsupported testimony naturally grew. Hence the law of 19. 15: One witness shall not be allowed to testify against a man for any *'awon* or *ḥaṭṭat* (i.e. any crime or misdemeanour); at the mouth of two witnesses or of three witnesses shall the matter be established.

The statute also contained a special clause permitting the impeachment of witnesses in cases of *sarah* (a capital offence), and prescribing death as the punishment for perjury in such cases.

There is one expression in the text which requires an explanation. Dwelling upon the necessity of building a proper highway to the designated city, in order that the defendant may, in the limited time allotted, reach that city, these words are used (I cite from the Authorized Version): Lest the avenger of the blood pursue the slayer, while his heart is hot (*ki yeḥam lebabo*), and overtake him, because the way is long, and slay him (19. 6).

From these words a picture has been drawn in many minds, something like this: A man accidentally kills another. Immediately he starts to run for the designated city, hotly pursued by the *go'el ha-dam*, and then there is a race between the two for the gate of the designated city, which is the goal. This view naturally assumes that a valid vendetta law exists alongside of a thoroughly established state law and nullifies it, and that such nullification is itself part of the state law. That this is an impossible position, I have endeavoured to demonstrate. Besides the intrinsic absurdity of the view, a word must be said of the peculiarity of the transaction.

The Version renders *ki* by *while*. *Because* would be at least as good a translation. It takes the expression *his heart is hot* for wild, undiscriminating rage, in which the worthy man is unable to distinguish between a cowardly assassination and an obvious accident. The phrase is a rare one. It does, however, occur in another place (Ps. 39. 4 (3)). The singer utters a penitential psalm. He has been afflicted, and knows that his own backslidings are to blame. He humbly prays to know his end, his hope is in the Lord that he may be delivered from all his transgressions and recover his former health. The state of mind when he thought these things, and before he spoke, he describes as *ḥam libbi*

(my heart was burning (or hot) within me), meaning that he hesitated to utter his prayer though he earnestly desired to do so.

At most, therefore, the expression in our text would mean: For the *go'el ha-dam* is earnest (zealous), and might overtake and slay him if he be delayed by bad roads.

There is an antithetical expression which confirms this view. When Jacob's sons told their father the marvellous tale of Joseph's high state in Egypt he could not at once believe it (*wayaphog libbo*). König's *Wörterbuch* (Leipzig, 1910) renders this with *erkalten*, so that Jacob's heart would have become cold on hearing the narrative. The misunderstanding is produced by the use of the word *heart*. In English we do not use it in that connexion. We receive news coldly or with warmth, without mentioning our hearts. The Hebrews, when they mentioned them, meant no more than we do.

All that is meant by the sentence is that the *go'el ha-dam* would surely execute his warrant if the defendant tarried beyond his allotted time.

If this explanation be rejected, the fact still remains that the code as now before us was fixed at a time when the whole institution had become a thing of the past, and was therefore subject to the interpretation, or misinterpretation, of a later age.

Respecting the change in the law of evidence forbidding the taking of the testimony of one witness, it may be remarked that the records establish it as having been made very early in the new movement. When Naboth was charged with blasphemy against God and treasonable utterances against the king, it was assumed as a matter of course that two witnesses were required (1 Kings 21. 10, 13).

This was in the reign of Ahab (876–854 B.C.), who was a contemporary of Jehoshaphat of Judah (873–849 B.C.), and the narrative runs as if the law were then so old that the memory of its origin had passed away. We cannot be far wrong if we refer it to Solomon's day (970–933 B.C.).

The Numbers text is the next. In some respects it is, perhaps, the most interesting of all.

The designated three cities with their federal legate, and their indefinite function of interference with the *zikne ha-'ir*, have not accomplished the purpose. The *go'el ha-dam* has not proved his ability to prevent the practice of *kofer*. They have evidently learned how to circumvent him. The whole institution is now to be thoroughly remodelled.

It begins with a measure not only new but subversive of a well-established policy. The guild of Levites had early been selected as itinerant agents to bring home to each of the cantons of the country the principles and policies of the national government. Upon this point the authorities are overwhelming.

JHVH spake to Aaron: Thou shalt have no inheritance in their land, neither shalt thou have any part among them. I am thy part (*helek*) and thy inheritance (*nahalah*) among the *Bne-Israel* (Num. 18. 20).

As to the Levites: . . . it is a perpetual statute (*hukkat 'olam*) throughout your generation, that among the *Bne-Israel* they have no inheritance (*nahalah*) (Num. 18. 23, 24).

The Levites were not numbered among the Bne-Israel, because there was no *nahalah* given them among the Bne-Israel (Num. 26. 62).

Levi hath no *helek* or *nahalah* with his brethren. JHVH is his *nahalah* (Deut. 10. 9).

The Levite within your country (*be-sha'arekem*) hath no *ḥeleḳ* or *naḥalah* with you (Deut. 12. 12 ; 14. 27, 29).

The Kohanim, the Levites, the whole tribe of Levi, shall have no *ḥeleḳ* or *naḥalah* with Israel (Deut. 18. 1).

JHVH is their *naḥalah* (Deut. 18. 2).

Only unto the tribe of Levi he gave no *naḥalah* (Josh. 13. 14).

JHVH, the *Elohim* of Israel, was their *naḥalah* (Josh. 13. 33).

Unto the Levites he (Moses) gave no *naḥalah* among them (Josh. 14. 3).

The fixed policy attested by these many records may already have been somewhat trenched upon. It was at the beginning of Solomon's reign that he sent the *Kohen* Abiathar in disgrace from the court to his estate (*'al sadeka*) at Anathot (1 Kings 2. 26), which then was, and till the exile continued to be, a Levitical city. At all events, the decree went forth that the Bne-Israel should give to the Levites a portion of their own *naḥalah* in the *'arim*, together with appurtenant fields (*migrash*) ; that is, cantonal jurisdiction over the territory so given should be abandoned. This, though violating the spirit of the older law, was in accordance with its letter, which merely forbade Levites to have a *naḥalah* within the *'arim* (*be-sha'arekem*). The *naḥalah* now acquired by the Levites was no longer within the *'arim*, but outside of them. The Levites were citizens of the federal state only, the jurisdiction over the newly-acquired territory was in them, and the transaction was, in effect, a cession of jurisdiction over the Levitical territory to the federal government.

It was further enacted that out of the forty-eight federal cities thus created (among which, by the by, Anathoth is

reckoned (Josh. 21. 18)), there should be six *'are ha-miḳlaṭ* whither a *roṣeaḥ* might flee (*la-nus*).

And thereupon, the general policy being thus explicitly declared, the specific purpose of the *'are miḳlaṭ* is enlarged upon. The *roṣeaḥ* is now defined (35. 12) as *makkeh nefesh bi-shgagah*, one who kills a person without intending to do so. The city to which he goes is *miḳlaṭ* from the *go'el*, in order that the *roṣeaḥ* may not die before he has been adjudged guilty of murder by the federal court, the *'Edah* (35. 12). Three of these *'are miḳlaṭ* shall be east of Jordan, and three west of it. The right to a federal trial for murder belongs not only to the Bne-Israel, but also to the *ger* and the *toshab*. The *'Edah* is the final court of appeal to determine whether the judgement of the local *ziḳne ha-'ir* condemning the defendant to death for murder, shall stand (35. 24). The issue presented to the *'Edah* is defined as being between the condemned man on the one side and the *go'el ha-dam* on the other.

If the *'Edah* refuses to affirm the conviction of murder, and declares the offence manslaughter, the *go'el ha-dam's* death-warrant is suspended, but not annulled. The prisoner is remanded to the *'ir miḳlaṭ*, there to remain. The term of his confinement in that city is now fixed. He is to be discharged at the death of the *Kohen ha-gadol* (the *Kohen* anointed with the holy oil). If he at any time before commits prison-breach, that is, goes outside of the city wall, the *go'el ha-dam's* death-warrant becomes operative, and it is the latter's duty to execute the prisoner. This execution is lawful and justifiable. No blood-guilt arises from it (*en lo dam*) (35. 27).

At the expiration of the prisoner's term of service the death-warrant loses all force and validity. The manslayer

returns to his home and estate, free from any further consequences. His crime has been fully expiated (35. 28).

Thereupon there is an emphatic prohibition of *kofer* in murder cases; the murderer must be put to death (35. 31). And this is followed by an equally emphatic prohibition of *kofer* in cases of manslaughter; the defendant's term in the *'ir miḳlaṭ* may not be evaded or abridged by compounding (35. 32).

The general policy is then vindicated by a declaration of the principle that murder pollutes the land, and that the land cannot atone for this pollution save by the blood of the murderer (35. 33). And this principle is enforced by the thought that JHVH dwells in the land, that JHVH dwells among the Bne-Israel (35. 34).

To this Numbers text that of Joshua 20 is a mere pendant. It begins by directing the appointment of six *'are ha-miḳlaṭ*, whither the *roṣeaḥ* (*makkeh nefesh bi-shgagah, bi-bli-da'at*) may flee, and they shall be for *miḳlaṭ* from the *go'el ha-dam* (20. 3). When the defendant arrives at the gate of the *miḳlaṭ* city he stands before the *ziḳne ha-'ir* of that city and states his case. It is safe to affirm that he always declares that it was no murder, that *ha-elohim innaḥ le-yado*, that it was *bi-bli-da'at*, that it was *bi-shgagah*.

The hearing is unilateral, being, in effect, a motion to grant an appeal from the judgement of the *zeḳenim* of his *'ir*. The probability is, that under such circumstances a *prima facie* case for granting the appeal was generally made out, whereupon he was admitted for detention into the federal city.

If the *zeḳenim* of his city, or the *go'el ha-dam*, believed that there was no proper case for appeal, the latter went to the *'ir miḳlaṭ* and applied to the *ziḳne ha-'ir* for the

surrender of the prisoner to his custody. This he was compelled to do, because his warrant, though it ran everywhere else in the country, was ineffective in the federal territory. Had he executed it there, he would have been himself guilty of murder. It was for this reason that he asked for the prisoner's surrender. This was, in effect, a motion to quash the appeal. Originally the *zikne ha-'ir*, perhaps in conjunction with a federal legate, heard the case on this motion and determined it. If they decided to quash, the prisoner was surrendered to the *go'el ha-dam* (Deut. 19. 12). Under the law, as it was recast, the authorities of the *miklat* city were shorn of this power, and the case had to go to the *'Edah* for trial and judgement (20. 6).

And this exclusive jurisdiction of the *'Edah* is emphatically reiterated. 'These are the *'are ha-mu'adah* for all the Ben-Israel and for the *ger* whither any *makkeh-nefesh bi-shgagah* might flee (*la-nus*), and not die by the hand of the *go'el ha-dam* until he shall have been adjudged guilty of murder by the *'Edah*' (20. 9).

There is one other feature of the Numbers text which must not be overlooked. It is a specific law of evidence for homicide cases only, and reads thus:

Homicide (*kol-makkeh-nefesh*).

By the mouth of witnesses he (the *go'el ha-dam*) shall put the *roseah* to death. One witness may not testify to procure a person's death (35. 30).

There are new features of this Numbers text which are worthy of remark.

For the first time we hear of *'are miklat*. It will be remembered that in Exodus there was sanctuary in the *makom*, and in Deuteronomy there were separated cities. These were all in cantonal territory. Now we have federal

cities with a distinctive name. All the versions render the word *miḳlaṭ* with refuge or asylum. The translators, however, all laboured under the prepossession that the ancient institution, the sanctuary, was still in existence, and that it permeated the law always. The fact is, however, that the establishment of the separated city of Deuteronomy extirpated the ancient sanctuary, and created an institution belonging purely to the region of civil law. It did more. It gave a distinct punitive character to the internment of the manslayer in the separated city, though the text lacks definiteness as to the duration of the punishment.

When the system was thoroughly reconstructed, as the Numbers and Joshua texts show it was, the idea of the *'ir miḳlaṭ* was no longer doubtful or confused. It was a place for the detention of a convicted murderer, pending an appeal to the federal court, the *'Edah*, and for the internment of a convicted manslayer during the term of life of the *Kohen hagadol* then in office.

Refuge or asylum gives no adequate notion of these functions of the *'ir miḳlaṭ*.

The word *miḳlaṭ* is obscure. It occurs nowhere else than in the legal and historical passages we have cited, and in their doublets in Chronicles. The root *ḳalaṭ*, from which it is derived, is represented in but one other passage in the Bible. Leviticus 22. 23 speaks of a bullock or of a lamb that is not perfect enough to offer for a vow (*neder*), but may be accepted for a *nedabah*, a gift (not for sacrifice). The characteristics that constitute this defect are spoken of as *sarua'* or *ḳaluṭ*. The Authorized Version renders *sarua'* by *something superfluous*, and *ḳaluṭ* by *something lacking*, recognizing a certain opposition between the two. Kautzsch understands the meaning of *sarua'* to be that the animal

has a limb or limbs which are too long, and *ḳaluṭ* that the limb or limbs are too short. Strangely enough, the antithetical word *sarua'* occurs only in Leviticus, once in the instance cited and again in 21. 18, where the Authorized Version consistently renders *something superfluous*. Here Kautzsch again understands it to mean having a limb or limbs which are too long.

The root *sara'* (from which *sarua'* is derived) is represented by only one other word in the Bible. Isaiah, in the course of a bitter reproach addressed to the Jerusalem magnates, uses the figure (Isa. 28. 20), that the bed is too short for a man to stretch himself on it (*ki kaṣar ha-maṣṣa' me-histarea'*). The verb *sara'* therefore means to stretch one's self at will. If the verb *ḳalaṭ* is its opposite, as all seem to agree, it must mean to be 'cabin'd, cribb'd, confin'd', and this meaning would agree exactly with the ascertained function of the *'ir miḳlaṭ*, the prison city.

While we are on this branch of the subject, it may be as well to say a word on the subject of fleeing. The defendant always flees to the *'ir miḳlaṭ*. The verb is *nus*, which undoubtedly means to flee, and that in prehistoric times, when murderers sought altars for asylums, they fled to them, need not be questioned. The point is that the verb *nus* became technical, and long after men had ceased running to the cover of an altar, it continued to be used for the acts men did under later law to stay judgement against themselves. In our own language, when a man loses his case, he promptly says that he will go to the Supreme Court at once, though he sits still.

We may therefore admit that the word was used of old when men sought the protection of the *mizbeaḥ*. When, however, the separated city was established, it was inevitable

that a certain time would be allowed for the defendant to reach it. He was not to run a race. Undoubtedly he had to take his appeal without delay. The modern devices of dilatory motions and endless appeals on trivial and ridiculous points, which bring justice into contempt, would have met with no tolerance. Doubtless the time set for appeal was short. Unless taken within a limited number of days, it was not a *supersedeas*, and the public executioner (*go'el ha-dam*) was in law bound to execute the death-warrant. During the few days, however, the defendant was perfectly safe. Naturally he could not stay at home. It was the part of common sense to proceed at once to take his appeal. And this necessity may easily be described by a word meaning *to act promptly, to hasten, to go at once*. And this, we believe, is all that the verb *nus* means in this connexion, though it many times in other connexions means to flee, to run away.

That it has other meanings than to run away in fear the literature shows:

2 Kings 9. 3, 10. Elisha instructed one of his corps of *nebi'im* to anoint Jehu king of Israel, and having done so, to depart at once, without delay (*we-nastah we-lo teḥakkeh*).

There are others in which the word means to turn to one for help.

To whom will ye turn (*tanusu*) for help? (Isa. 10. 3).

If those to whom we turned for help (*nasnu*) have fared thus, how shall we escape? (Isa. 20. 6).

There are still other instances in which it means an impetuous forward movement, the very reverse of flight from a pursuer:

He breaks in like a confined river

Which the spirit of JHVH drives before it (*nosesah bo*)
(Isa. 59. 19).

Ye would not, but ye said:
No, on horses will we fly (*nanus*)—
Therefore shall ye flee (*tenusun*);
On the fleet (*ḳal*) will we ride—
Therefore shall ye have fleet pursuers (*yiḳḳallu*)
(Isa. 30. 16).

In the one instance, that of Joab, where it means seeking the protection of the altar, there was really no pursuit and no running away. We may be sure that Joab walked calmly to the *ohel* JHVH (1 Kings 2. 28, 29).

The most important passage in which the word is used is in Prov. (28. 17). The Hebrew text is:

Adam ʿashuḳ be-dam nafesh, ʿad-bor yanus; al-yitmeku bo.

The Authorized Version is:

A man that doth violence to the blood of any person shall flee to the pit; let no man stay him.

The translation is not happy, since it conveys no clear meaning. Others understand it to mean that a person guilty of murder must be a fugitive till death, and that no man should aid in softening his hideous fate.

It would seem, however, that these renderings rest on the supposition that the *bor* is the grave, man's last resting-place. We shall hereafter take occasion to show that *bor* is a prison, and, moreover, that *ʿir miḳlaṭ* disappeared no later than 850 B.C., and that thereafter the homicide went to the *bor*. When we consider the Proverb in question in that light, it becomes a sane, popular saying.

When the *ʿare miḳlaṭ* were replaced by prisons in various places, and the accused was sent thither to await his

trial, or the result of his appeal, he would, without doubt, have liked to avoid this confinement.

The Proverb is a warning to friends that helping him will hurt themselves. In plain English: Don't interfere with a murderer's going to prison. The ordinary mode of such interference would be by surreptitiously harbouring him. *Al yitmeku bo* means, therefore, Do not receive him.

Isaiah (33. 15) gives us a fine instance of the use of this verb *tamak* in a sense closely related. It is in his description of the just man:

> He walketh righteously and speaketh uprightly.
> He despiseth the gain of oppressions.
> He closeth his hands against receiving bribes (*mi-temok ba-shoḥad*).
> He stoppeth his ears against blood-informers.
> He shutteth his eyes against the sight of evil.

There is another new term in this text. The defendant, who is to be interned in the *'ir miḳlaṭ*, is now the man who has killed *bi-shgagah*, a term not before used in the criminal law, either in the Exodus or the Deuteronomy text. In the former it was *ha-elohim innah le-yado*, in the latter *bi-bli-da'at*. For both these ideas there is now substituted the general statement that the defendant acted in error, that there was no intent to kill, or, as the versions render it, he acted unwittingly.

One may note in this a certain change in the mental atmosphere of the law courts. When the *ziḳne ha-'ir* of the various cantons were to administer the law, the act of manslaughter was described as the act of God, having been perpetrated without intent by man. For the federal (Levitical) courts, however, there was offence in this. The unfortunate slayer, however guiltless of murder, was never-

theless a criminal of a certain grade, and the ascription of the act to God was repellent. It could be defended only on the subtle theory that Heaven punished in some mysterious way men who think or secretly do wicked things which human law and justice are too feeble and short-sighted to reach. According to this theory, both the manslayer and his victim have offended Divine justice, the former in a lesser, the latter in a greater degree. The crude fact that one man had killed another, without warrant of law, brushed aside this subtle theologizing, and the act was now described as a crime, however unintentional, committed by the slayer.

The word itself does not import freedom from blame. Its root-word, *shagag*, has an equivalent, *shagah*, and though this means to err, to go wrong, it frequently reproaches the wanderer that it is his own wickedness which led him astray.

When Saul confesses that he ought not to have sought David's life, he says, *wa-eshgeh* (I have erred), admitting that he had done the wrongful acts, but had not realized how wicked they were (1 Sam. 26. 21).

Isaiah, reproaching Ephraim, says that the *Kohen* and the *Nabi* have erred (wandered from the right path, *shagu*) because of their own bad habit of drunkenness, thus charging them with wickedness as the cause of their error (Isa. 28. 7).

In Leviticus the word is often used to denote certain classes of doings for which men should bring sin-offerings. They are all arrayed under the head of *bi-shgagah* (inadvertence), and may be committed by the high priest (Lev. 4. 3), by the *'Edah* (4. 13), by the *Nasi* (4. 22), and by any member of the *'Am ha-ares* (4. 27); by any person whatsoever (5. 15).

In Numbers there is reference to sins committed inadvertently (*bi-shgagah*) by the *'Edah* (15. 24), and by any individual whatever (15. 29).

The express distinction is, however, made between this class of sin and that other which is deliberate and wilful, and which is described as being done with a high hand (*be-yad ramah*) (15. 30).

Every sinner and every manslayer was naturally apt to plead that his sin or his crime was *bi-shgagah*. It is to be feared that this plea was, in time, looked upon with suspicion. Ecclesiastes (5. 6) throws discredit upon it by intimating that in the Heavenly tribunal it would tend to aggravate rather than to alleviate the sentence. 'Say not, before the angel, it was *shegagah*; wherefore should God be angered by thy speech?'

In the legal passages, however, the word was doubtless used technically and construed scientifically to mean any homicide which lacked the quality of malice aforethought.

The next feature of the text is the vesting of the jurisdiction in the federal high court, the *'Edah*. We are not told where the *'Edah* sits, but where it does not sit is made perfectly plain. The *'ir miḳlaṭ* is not the seat of the *'Edah*. In cases where the latter reverses the judgement of the *ziḳne ha-'ir*, and declares that the defendant is not guilty of murder, but is guilty of manslaughter, it is the *'Edah's* duty to restore him to the *'ir miḳlaṭ* (35. 25). In other words, when the trial before the *'Edah* was to be held, the prisoner was taken, in charge of the authorities, to the seat of the *'Edah's* sessions (probably Jerusalem). There the trial took place, and if the defendant was found guilty of murder, the execution doubtless followed then and there. If, however, the degree of the offence was decided to be

manslaughter, the *'Edah's* officials took him back to the *'ir miḳlaṭ* from which he had come, there to undergo the confinement imposed by the law.

And now follows perhaps the greatest peculiarity of this text. Murder and manslaughter are both to be defined, and their punishment ascertained. Twelve verses (16–27) are devoted to the subject. The first three (16–18) appear to be extracts from records of actual cases where the accused were convicted of murder, each of them being followed by the death sentence in the words of the statute: *mot yamut ha-roṣeaḥ*, and the next verse (19) gives the court formal direction for its execution: The *go'el ha-dam* will put the *roṣeaḥ* to death; will put him to death *be-fig'o bo* (forthwith).

The expression *be-fig'o bo* is technical. When a man was doomed to die for crime, the old Hebrew law permitted no delay (Lev. 24. 14; Num. 15. 35, 36; Deut. 21. 21; 22. 21, 24; Joshua 7. 25; Judges 6. 30). The sentence therefore included the command to the *go'el ha-dam* that he execute it forthwith.

The word is used in this sense in Exod. 5. 3. When Pharaoh declares that he has no knowledge of JHVH and will not let Israel go, Moses and Aaron urge him to relent, because JHVH had commanded a three days' journey into the desert for sacrifice, and failure to obey would be instantly punished with death by pestilence or sword (*pen yifga'enu ba-deber o be-ḥareb*).

When Gideon captured Zebah and Zalmuna and devoted them to death, those sturdy warriors calmly told him to kill them forthwith: *Ḳum attah ufga' banu* (Judges 8. 21).

When the Judahites asked Samson to surrender in order that they might hand him over to the Philistines, and thus save themselves from the latter's forays, he made this

condition: Swear that ye will not yourselves kill me (*pen tifge'un bi attem*) (Judges 15. 12).

When Micah reproached the Danites for their audacious robbery, they bade him be silent or he and his would die on the spot (*pen yifge'u bakem anashim mare nefesh we-asaftah nafsheka we-nefesh beteka*) (Judges 18. 25).

When Saul ordered his soldiers to kill the priests at Nob, they would not (*we-lo abu lifgoa' be-kohane JHVH*) (1 Sam. 22. 17). Doeg, however, did so on the spot (*wa-yifga' hu ba-kohanim*) (1 Sam. 22. 18).

When the Amalekite reported that he had killed Saul, David called one of his men and ordered him to kill the self-confessed assassin of JHVH's anointed: *Gash, pega' bo*, whereupon the soldier slew him (2 Sam. 1. 15).

And the words are used to describe the immediate death of Adonijah at the hands of Benaiah (1 Kings 2. 25).

Solomon also ordered Benaiah to execute Joab forthwith by the words: *Lek pega' bo* (1 Kings 2. 29, 31, 32, 34). And the like happened to Shimei (*wa-yifga' bo wayamot*) (1 Kings 2. 46).

A man escapes a lion, and a bear kills him (*ufga'o ha-dob*) (Amos 5. 19).

This first group of four verses (Num. 35. 16–19) is followed by a separate group of two (20. 21). These define murder. The important elements are previous enmity (*sin'ah, ebah*) or lying in wait (*sediyah*). *Sin'ah* and *ebah* are synonymous. In Exodus neither word is used. In Deuteronomy there is *sin'ah*. The words *yazid* and *be-'ormah*, however, which are used in the Exodus text, necessarily imply it. The former indicates an insolent purpose to kill, and the latter deliberate preparation for carrying this purpose into effect.

Ṣediyah is used in Exodus, while Deuteronomy, without using the word, employs a synonymous term (*we-arab lo*).

Thus far Exodus, Deuteronomy, and Numbers are in substantial agreement. The new feature in the Numbers law is the detailed description of the physical acts by which murder may be committed. These are probably not intended to be an exhaustive list, but they certainly go far to cover the field. An iron weapon is presumed to be murderous (35. 16); a stone or a wooden weapon may be. Whether or not these are murderous weapons must be determined by inspection, and by investigation into the previous relations of the parties. If a man kill another with either of them, the law requires that they be such wherewith a man may die, meaning thereby, would be likely to die, before their use raises the presumption that murder was intended. Wherever this presumption arises, it may be negatived by proof of the fact that there was no previous *ebah* between the parties.

Murder, however, may be committed without any weapon. A man may kill another with his hands. In such cases *ebah* or *sin'ah* must be clearly proved (35. 21).

Following the definition of murder is a group of two verses (22–3) defining manslaughter.

The first (22) is a mere negative of 20. The latter declares it to be murder if death is caused by thrusting him (*yehdafennu*) of hatred (*sin'ah*) or hurling at him (*hishlik*) or lying in wait (*ṣediyah*).

The former declares it to be manslaughter if death is caused suddenly (*be-feta'*) by thrusting him (*hadafo*), without hatred (*ebah*), or by casting upon him (*hishlik*) anything without lying in wait (*ṣediyah*).

And to this is added verse 23, which also reduces the

offence to manslaughter, if he cast upon him (*wayappel*) a murderous stone, seeing him not, not being his enemy (*oyeb*), nor seeking to harm him. The same principle would doubtless apply if, instead of a murderous stone, it was a murderous wooden instrument.

It will be noticed that the new term, *be-feta'*, is now introduced. It means an event that not only was not foreseen, but that happened suddenly, like lightning from a clear sky. The expression seems apt to designate one of the many quarrels which arise between high-tempered men who may not even know each other, but who are suddenly brought into contact, under circumstances which induce one or the other to believe that he has been offended. The idea thus conveyed is the same as the *ha-elohim innah leyado* of Exodus, and the *bi-bli-da'at* of Deuteronomy.

The last group, four verses (24–37), are a pendant to verse 12, which provides for trial by the *'Edah*.

Verse 24 affirms this, by declaring that the *'Edah* shall judge between the slayer and the *go'el ha-dam*, according to the *mishpaṭim* which we have just considered. The term *go'el ha-dam* is here used as representing what we would call the commonwealth, the public in its rôle of the prosecutor of crime.

Verse 25 provides that if the commonwealth's case is not made out, the *'Edah* remands the manslayer to the *'ir miḳlaṭ*, there to abide until the death of the *Kohen ha-gadol*.

Verses 26 and 27 provide against the manslayer's escape from the *'ir miḳlaṭ* before the end of his term.

Incidentally, they reveal a feature of the negotiations between the cantonal authorities and the federal government. When the separated cities were found inadequate

for the purposes of the latter, and it had succeeded in procuring from the cantons a cession of their jurisdiction over certain cities in the various districts of the country, the condition was agreed upon that a death-warrant issued by the *zikne ha-'ir* should continue to be valid everywhere in the land except in places under exclusive federal jurisdiction. This is the meaning of verses 26 and 27. So soon as the manslayer broke bounds, he was at any point in the country subject to the enforcement of the original death-warrant, which was merely suspended while he was on federal territory, but was not annulled or made void until he had served his full term in the *'ir miklat*. When that had been done, the warrant was dead.

A word is needed on the evidence law in this text. It differs from the Deuteronomy law in several respects. The latter, as we have seen, is general and applies to the hearing of every crime and misdemeanour. It also affirmatively requires two witnesses or three witnesses (19. 15).

Besides this general law, however, Deuteronomy has another version which limits it to capital cases (17. 6).

The Numbers statute regulates murder trials only (35. 30). It varies from the Deuteronomy law in that while it prohibits judicial action on the testimony of one witness, it prescribes no specific number of witnesses as necessary. It merely uses the plural, witnesses.

The probability is that the general law as stated in Deut. 19, 15 remained unmodified, except in so far as to permit trial and judgement on the testimony of two witnesses without more. The alternative number 'three witnesses', used in Deuteronomy, is difficult to explain. The thought in it seems to be that the denunciant, or the plaintiff, must be corroborated by two disinterested wit-

nesses. By the time of the Numbers statute he had probably been disqualified as a witness. Hence the change.

The Joshua text (20. 2–9) is, as has been said, a mere pendant of the Numbers text. It has the peculiarity that the Deuteronomic term *bi-bli-da'at* is used in verse 3, apparently as an explanatory note to the word *bi-shgagah*, which it follows, and in verse 5 is used without *bi-shgagah*. These, however, are matters of no moment.

The value of the text lies in its supplying details necessary for the completion of the Numbers text.

The latter tells us that the *roṣeaḥ* shall go to the *'ir miḳlaṭ*, and that from it he shall be taken to the seat of the *'Edah*, there to be tried. The Joshua text describes the proceedings when he reaches the *'ir miḳlaṭ*. His admission is a question to be decided by the *zeḳenim*, who, as the city is Levitical and federal, are governed by the federal law alone. As he states his own case, he would in most cases declare such facts as would establish *shegagah*. If he failed to do so, but on his own showing was a mere murderer, they would not receive him, and he would be delivered to the *go'el ha-dam* for execution, but if he were once admitted, the application of the *go'el ha-dam* for his surrender would have to be refused, and he would have to be tried by the *'Edah*. To the *'Edah*, whose seat was probably in Jerusalem, he would be taken by the federal authorities. At that trial his *'ir* would be represented by its *go'el ha-dam*, and perhaps by some of its *zeḳenim*. If the conviction of his *'ir* was affirmed, he would be executed forthwith. If, on the other hand, the *'Edah* ruled that it was manslaughter, he would be remanded to the *'ir miḳlaṭ* to serve his term.

We have still the Leviticus texts to examine. They

are silent as to the distinction between murder and manslaughter, and hence fail to indicate that the latter offence, if it existed in the eyes of the law, was in any degree punishable.

They have, however, one prominent feature which stamps them unmistakably as federal law. The *makkeh-ish* must be put to death (*mot yumat*) (24. 17, 21).

It behoves us, therefore, to ascertain the probable reason for the curtness of the passages.

They form part of a little *Torah* of twenty-four verses (Lev. 24. 10–23). It begins by a rather full report of the case tried by oracle, wherein the son of a Hebrew woman by an Egyptian man was sentenced to death for blaspheming the oracle (cursing the *Shem*), and shows that the principle established by that case was that the Hebrew law held persons not pure Hebrews (*gerim*) answerable to the law as fully as if they were pure Hebrews (*ezraḥ*).

To this, which serves as the text, are added brief notes:

1st. That a *makkeh-ish* must undergo the death penalty.

2nd. That a *makkeh-behemah* must compensate the injured party, *nefesh taḥat nefesh* (beast for beast).

3rd. That a maimer shall be reciprocally maimed (breach (*sheber*) for breach, eye for eye, tooth for tooth).

4th. That *mishpaṭ* (law) is single—the same for *ger* as for *ezraḥ*.

The origin of this interesting and curious document may be conjectured to be somewhat as follows. The projected law reform, we may be sure, was not the work of mere theorists or idealists. It was a practical measure to unify and solidify the kingdom. It demanded the extinguishment of local customs which were hostile to the general principles of the federal law. It had, however, other ends to attain

By this time the Hebrews were in unquestioned supremacy in the cantons, and the *gerim*, though everywhere considerable in numbers, were relatively powerless, as being hopelessly in the minority. They would naturally protest to the federal government that they were not fairly treated.

In the previous lecture it was intimated that the first step in the law reform was the limitation of trial and sanctuary to the cantonal capital, and that to assure the execution of the law, untainted by Canaanite custom, *Kohanim* or Levites were sent as assessors to the *zikne ha-'ir* in each of the said cities. On this point we have the precious *zikne ha-'ir* document (Deut. 21. 1–9), which happily, though not too relevantly, interjects into the proceedings of the *zikne ha-'ir* this note: And the *Kohanim* the *bne-Levi* shall come near; for them JHVH thy God hath chosen to minister unto Him, and to bless in the name of JHVH, and according to their pronouncement (*'al pihem*) shall be decided every *rib* (controversy) and every *nega'* (assault) (Deut. 21. 5).

If now we imagine one of these *Kohanim* appointed by the federal authorities to go to one of these cantons as assessor, he would naturally be charged to see to it that the *gerim* obtained full justice. The central authorities would give him a *sefer*, containing the great doctrine of the equality of all before the law, and the fact that the foundation case bore rather hard on the *ger* was an additional argument to show that when the case was the other way, it was just that the *ger* should receive the advantage. The notes to this original *sefer* may fairly be presumed to be the memorandum made by one of these *Kohanim* of three classes of cases, in which he succeeded in having the doctrine fairly carried out.

This suggested explanation of the form of the Leviticus text involves the conclusion that it was intended, primarily, to inculcate the doctrine and policy of the state, that the *ger* was equal in law to the *ezraḥ*, whether such equality would operate to his advantage, or to his disadvantage. If such were the true origin and intent of this Leviticus *Torah*, it would be idle to seek in it any elaboration of other doctrines or principles than the one it was specially intended to illustrate. For the purposes of our present investigation, it may therefore be dismissed without further comment.

This review of the texts would lack completeness if we failed to consider the only text, other than the legal ones, which has the term *go'el ha-dam*. It is the fourteenth chapter (vv. 1–24) of 2 Samuel.

The length of this lecture, however, forbids further expansion, and the matter may well go over to the next.

(*To be continued.*)